

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

PATRICK ELLERMAN,)	
)	
Plaintiff)	
)	CAUSE NO. 3:04-CV-261RM
v.)	
)	
DAVE MURTAUGH, <i>et al.</i>)	
)	
Defendants)	

OPINION AND ORDER

Patrick Ellerman, a *pro se* prisoner, filed a motion to alter or amend judgment pursuant to FED. R. CIV. P. 59 and a response to this court's order for a more definite statement clarifying his arguments in that motion.

In his original complaint, which was signed on April 6, 2004, Mr. Ellerman states that he was denied medical treatment in January 2002. In his clarifying response, he states that he was denied medication in October 2001.

Because there is no federal statute of limitations for § 1983 actions, courts apply the most appropriate state statute of limitations. Section 1983 claims are considered as personal injury claims for purposes of determining the applicable state statute of limitations. Wilson v. Garcia, 471 U.S. 261 (1985). The Indiana statute of limitations applicable to § 1983 actions is the two-year period found in IND. CODE § 34-11-2-4. Campbell v. Chappelow, 95 F.3d 576, 580 (7th Cir. 1996). The statute of limitations is an affirmative defense, but if a plaintiff "pleads facts that show his suit is time-barred or otherwise without merit, he has pleaded himself out of court." Tregenza v. Great American Communications Co., 12 F.3d

717, 718 (7th Cir. 1993). “[A] plaintiff can plead himself out of court. If he alleges facts that show he isn’t entitled to a judgment, he’s out of luck.” Early v. Bankers Life and Casualty Co., 959 F.2 75, 79 (7th Cir. 1992) (citations omitted). Because he signed his complaint on April 6, 2004, any claims arising more than two years before April 6, 2002, are barred by the statute of limitation. Mr. Ellerman does not allege, and based on these filings it would not be reasonable to infer, that any of these events occurred on or after April 6, 2002. Therefore the dismissal of this complaint was proper and the motion to alter or amend judgment (docket # 11) is **DENIED**.

SO ORDERED.

ENTERED: August 17, 2005

_____/s/ Robert L. Miller, Jr.
Chief Judge
United States District Court